

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ESTATE OF JAMES WILKINS, SR.,)	
GWENDOLYN FISH, EXECUTRIX,)	
)	
Plaintiff)	Civil Action No. 05-382
)	Judge Gary L. Lancaster/
v.)	Magistrate Judge Sensenich
)	
JAMESON MEMORIAL HOSPITAL;)	Re: Doc. No. 70
CLEMENTE AMBULANCE; and)	
ST. ELIZABETH HOSPITAL;)	
Defendants)	

MEMORANDUM ORDER

Plaintiff has filed a motion for leave to amend the Complaint, which will be denied. This case was removed to this Court pursuant to the Westfall Act, 28 U.S.C. § 2679(d). Therefore, it is properly before this Court based upon federal question jurisdiction and not jurisdiction based on diversity of citizenship. On May 23, 2006 the United States was dismissed as a party to this suit, without prejudice, for failure to exhaust administrative remedies. Consequently, only state law claims against non-federal employees remain. Moreover, this Court acknowledges that it has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.¹ Nevertheless,

¹Section 1367 of Title 28 of the United States Code, which addresses supplemental jurisdiction, reads in relevant part:

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which
(continued...)

the exercise of supplemental jurisdiction by this Court pursuant to section 1367 is discretionary.²

[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them. Needless decisions of state law should be

¹(...continued)
the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

²Section 1367(c) of Title 28 of the United States Code provides:

The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.

United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966) (internal footnotes and citations omitted). Furthermore, the Supreme Court has held that "a district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate." *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 357 (1988).

On August 7, 2006 Plaintiff filed a motion seeking leave to amend her Complaint to assert that the matter in controversy exceeds \$75,000.00 and that the Court has supplemental jurisdiction over Defendant Jameson Memorial Hospital. (Doc. No. 70.) Rule 15(a) of the Federal Rules of Civil Procedure provides for amendment of a pleading once as a matter of course at any time before a responsive pleading is served and then "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.Proc. Rule 15(a), 28 U.S.C.A.³ The

³Plaintiff has already amended her Complaint once. She filed an Amended Complaint on March 10, 2006 (Doc. No. 39).

Supreme Court of the United States interpreted Rule 15(a) in *Foman v. Davis*, 371 U.S. 178, 182 (1962), holding:

In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be "freely given."

As explained above, the instant action is properly before this Court based upon federal question jurisdiction and not jurisdiction based on diversity. Jurisdiction on the basis of a federal question does not require that Plaintiff allege an amount in controversy. Therefore, the amendment to the Complaint that Plaintiff seeks--the addition of an allegation that the amount in controversy exceeds \$75,000.00--is irrelevant.

Furthermore, even if this Court would consider original jurisdiction on the basis of diversity, such consideration would prove futile. Under 28 U.S.C. § 1332, a district court has original jurisdiction of a civil action "where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between--(1) citizens of different states;" The Supreme Court of the United States has interpreted "between citizens of different states" to "require complete diversity between all plaintiffs and all defendants." *Lincoln Property Co. v. Roche*, 126 S.Ct. 606, 613 (2005)

(citing *Strawbridge v. Curtiss*, 3 Cranch 267 (1806) and *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)). In the instant case, Plaintiff and Defendant Jameson Memorial Hospital are citizens of Pennsylvania while Defendants Clemente Ambulance and St. Elizabeth's Hospital are citizens of Ohio.⁴ Thus, complete diversity is lacking. Because complete diversity between Plaintiff and Defendants is lacking, amending the Complaint to add to the jurisdictional statement that the amount of the matter in controversy exceeds \$75,000.00 will not cure the deficiency in pleading original jurisdiction based on diversity and is, therefore, futile. Accordingly, the following order is entered:

AND NOW, this 23rd day of August, 2006;

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to Amend Complaint is denied.

s/Ila Jeanne Sensenich
ILA JEANNE SENSENICH
U.S. Magistrate Judge

Notice sent electronically to all parties of record.

⁴Plaintiff, the Executrix of the Estate of James Wilkins, Sr. is a citizen of Pennsylvania because the decedent was a citizen of Pennsylvania. 28 U.S.C. § 1332(c)(2) ("the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent,") Defendant Jameson Memorial Hospital is a citizen of Pennsylvania and Defendants Clement Ambulance and St. Elizabeth's Hospital are citizens of Ohio. 28 U.S.C. § 1332(c))1) ("a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principle place of business")